

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BATTERY ON THE GO, INC. d/b/a XSORii,

Case No. 15-cv-05010-WFK-RML

Plaintiff,

v.

DGL GROUP, LTD. and EZRA ZAAFARANI,

Defendants.

**PLAINTIFF'S ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANTS'
COUNTERCLAIM, AND DEMAND FOR JURY TRIAL**

Plaintiff/Counter-Defendant Battery on the Go, Inc., by and through undersigned counsel, files this Answer to the Counterclaim [DE 12] by Defendants DGL Group, Ltd. and Ezra Zaafarani.

PARTIES

1. Plaintiff is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 1 of the Counterclaim, and therefore denies same.

2. Admit.

JURISDICTION AND VENUE

3. Plaintiff admits the allegations in Paragraph 3 of the Counterclaim, except denies that the Court has jurisdiction over this matter pursuant to 17 U.S.C. §§ 101 *et seq.* Plaintiff denies any and all allegations or inferences of liability in Paragraph 3 of the Counterclaim.

4. Plaintiff admits that venue lies in this jurisdiction, except denies that venue is proper pursuant to 28 U.S.C. § 1400. Plaintiff denies any and all allegations or inferences of liability in Paragraph 4 of the Counterclaim.

5. With respect to Paragraph 5 of the Counterclaim, Plaintiff incorporates by reference the allegations in Paragraphs 1 through 72 of the Complaint [DE 1], as if fully set forth herein.

6. To the extent Paragraph 6 of the Counterclaim characterizes the Complaint [DE 1], which speaks for itself, no response is required. Paragraph 6 of the Counterclaim also contains legal conclusions, to which no response is required. To the extent a response is required, Plaintiff denies any and all allegations or inferences of liability in Paragraph 6 of the Counterclaim.

7. Deny.

8. Deny.

9. Paragraph 9 of the Counterclaim contains a request for relief, and no response is required. To the extent a response is required, Plaintiff denies any and all allegations or inferences of liability in Paragraph 9 of the Counterclaim.

PRAYER FOR RELIEF

Plaintiff denies that the Defendants are entitled to any of the relief requested in the prayer for relief.

AFFIRMATIVE DEFENSES

1. Defendants' claims are barred in whole or in part by the doctrine of unclean hands.
2. Defendants' claims are barred in whole or in part by the doctrine of estoppel.
3. Defendants' claims are barred in whole or in part by the doctrine of laches.
4. Defendants' claims are barred in whole or in part by the applicable statute of limitations.
5. Defendants' claims are barred in whole or in part by the doctrine of waiver.
6. Defendants' Counterclaim fails to state a cause of action.
7. Defendants' Counterclaim is duplicative because an adjudication of Plaintiff's claims will render the Counterclaim moot.

8. Judgment on Defendants' Counterclaim would not be useful to the parties because adjudication of Plaintiff's pending Complaint [DE 1] will address all issues raised by Defendants' Counterclaim in terms of the legal rights and duties of the parties. Thus, Defendants' Counterclaim for declaratory judgment would not alleviate a legal uncertainty.

Plaintiff reserves the right to amend its Answer to assert additional Affirmative Defenses based on information discovered during the course of this action.

CONCLUSION

Based on the above, Plaintiff requests that the Counterclaim against it be dismissed in its entirety with prejudice and that the Court award Plaintiff its fees and costs incurred in defending against the Counterclaim, together with any other relief the Court deems just and appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: November 30, 2015

Respectfully submitted,

ZARCO EINHORN SALKOWSKI & BRITO, P.A.

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CERTIFICATE OF SERVICE

I certify that the foregoing was served upon all counsel of record via the Court's ECF system on November 30, 2015.

Dated: November 30, 2015

s/ Gabriel Estadella

Gabriel Estadella (GE1496)